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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Communication No. 64/2013

Decision on admissibility adopted by the Committee at its sixty-fourth session (4-22 July 2016)

Submitted by:	K.S.
Alleged victim:	The author
State party:	Denmark
Date of communication:	26 July 2013 (initial submission)
References:	Transmitted to the State party on 6 December 2013 (not issued in document form)
Date of adoption of decision:	19 July 2016

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Annex

Decision of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-fourth session)

concerning

Communication No. 64/2013*

Submitted by:	K.S.
Alleged victim:	The author
State party:	Denmark
Date of communication:	26 July 2013 (initial submission)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 19 July 2016,

Adopts the following:

Decision on admissibility

1. The author of the communication is K.S., a United States citizen. She claims to be a victim of a violation of article 16 (1) (d) of the Convention on the Elimination of All Forms of Discrimination against Women, in particular because her right to joint custody over her son, C.,[1] was removed in Denmark in allegedly unfair and biased proceedings. The Convention and the Optional Protocol thereto entered into force for the State party on 21 May 1983 and 22 December 2000, respectively. The author is not represented by counsel.

Facts as presented by the author

2.1 The author lived in Denmark from 1997 to 2012. Together with her Danish husband, H., they had a son, C.[2] In 2007, the author's father was diagnosed with cancer; she returned alone to the United States of America because her husband

* The following members of the Committee took part in the consideration of the present communication: Gladys Acosta Vargas, Bakhita al-Dosari, Nicole Ameline, Magalys Arocha Dominguez, Barbara Bailey, Niklas Bruun, Louiza Chalal, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Ismat Jahan, Dalia Leinarte, Lia Nadaraia, Theodora Nwankwo, Pramila Patten, Silvia Pimentel, Biancamaria Pomeranzi, Patricia Schulz and Xiaoqiao Zou.

[1] From the material on file, it transpires that C. was born in November 2003.

[2] The author does not state when she and H. married or separated. She does not provide details about how or when she obtained joint custody of C.

refused to let C. travel abroad. On 25 October 2007, H. consulted a caseworker, claiming that his son was misbehaving and confused about who his mother was. He claimed that his former wife had been away for four months and that upon her return C. had reacted violently. He asked the Danish State Administration to change C.'s primary residence to his own so that the child could have a more stable life.[3] Later, H. applied to the State Administration for sole custody of C.

2.2 When the author returned to Denmark, H. refused to discuss their son with her and wanted sole custody. The author asked a court to authorize her return to the United States with C.[4] In court, the judge favoured H. because she was not allowed to use her notes in Danish, which she needed because she was not fluent in the language, whereas her former husband, a Dane, was permitted to read from his notes.[5] In addition, the author was not notified that the court had ordered a second report by a child psychologist, which contradicted the first report.[6] On 6 July 2012, the court awarded sole custody of C. to H. on the basis of the second psychological report. The court argued that, the child's affection for both parents notwithstanding, it was best for him to remain in the custody of his father in Denmark, where measures had been taken to assess and treat his problems.

2.3 The author then appealed to the High Court, with a request to obtain full custody and a new report by a child psychologist. On 25 September 2012, the High Court dismissed her appeal.

2.4 On an unspecified date, at the request of H., the author was convened to an emergency meeting with the State Administration and asked to surrender C.'s United States passport. She was informed that she was not allowed to take C. anywhere without her former husband's permission.

2.5 The author claims that H., holding full custody of C., obstructs her every effort to have visitations or even telephone or online contact with her son. She claims that she cannot take C. on holiday because H. refuses. According to her, the Danish authorities do not help her to enforce her visitation rights solely because she is a foreign mother. She believes that there were no legitimate grounds for removing C. from her custody because she is not violent, does not use drugs or alcohol and is not mentally unstable.

2.6 On an unspecified date, the author went to the State Administration to make an agreement on visitation rights. On 19 December 2012, it was agreed that she would be entitled to three weeks of summer holiday every year with C. and two weeks every other Christmas in odd years. She was also entitled to have online contact with C. at least twice a week. In that context, the author claims that H. has recently begun supervising her conversations with C. and shouting at her when he is unhappy about something that she and C. are discussing. The author also states that H., with the support of the Danish authorities, is demanding that her visitations with C. take place in Denmark, under his supervision, and that online communication be ended.

[3] The author does not specify when the contact with the State Administration was made.

[4] No date is specified.

[5] According to a document provided by the author, the court session was held on 23 January 2012.

[6] The author claims that she explicitly stated that she would not give her consent for C. to be treated or contacted by a psychologist because he was too young and that it could affect him negatively.

2.7 On 29 April 2013, the author asked the enforcement court to authorize her visitation rights as set forth by the State Administration. The court, however, stated that it was unable to enforce those rights. Nevertheless, at the suggestion of the court, the author filed a case with the State Administration to make changes to her visitation orders. Her request, submitted on 3 May 2013, was rejected on 13 June 2013. The author also complained to the National Social Appeals Board. Her complaint was rejected on 2 July 2013.

Complaint

3. The author claims a violation of article 16 (1) (d) of the Convention. She believes that it is not in the best interests of her child to be deprived of his mother and claims that custody has been forcefully and illegally denied to her because she is a foreign mother. She believes that there is systemic discrimination against foreign mothers in favour of Danish men in cases of custody in the State party and regards that policy as the source of deprivation of custody of her son.

State party's observations on admissibility

4.1 By a note verbale dated 6 February 2014, the State party presented its observations on admissibility. It considered that the communication should be declared inadmissible because the author's son had no standing under the Convention, domestic remedies had not been exhausted, it was unsubstantiated and it constituted an abuse of the right of submission.

4.2 The State party recalls the facts of the case. The author was married to a Danish national, their son was born in 2003 and they had joint custody of the child. In January 2005, the author and her husband divorced, the child remained with the mother and the father had access. From 3 August to 26 October 2007, the author was in the United States to visit her father, who was ill. The child remained with his father. When the author returned to Denmark, a disagreement arose between the parents about the child's residence.

4.3 On 20 February and 25 March 2008, the author contacted the State Administration for Southern Denmark, asking for the arrangements for the access of the father to be modified. In the meantime, on 8 February 2008, the parents attended an open child welfare counselling session at the State Administration. On 16 April 2008, the father applied for a change of C.'s residence.

4.4 Following those applications, a further meeting was held at the State Administration on 16 June 2008. It emerged that the local authority was examining C.'s circumstances and the parents agreed to refrain from changing the child's residence. A follow-up meeting was scheduled for 18 September and subsequently postponed to 9 December 2008.

4.5 On 23 October 2008, the author applied for the termination of joint custody, asking for sole custody. On 9 December 2008, at the follow-up meeting at the State Administration, no custody/access agreement was reached and both parents stated that they wanted the case to be assessed in court. On the same day, the State Administration brought the case before the Svendborg District Court.

4.6 On 29 April 2009, the Svendborg District Court held that C. would continue to reside with the author, but that his father would have access to him from Wednesday afternoon to Monday morning each uneven week and during public holidays, by

agreement of both parents. The father appealed to the High Court of Eastern Denmark, which upheld the decision on 12 March 2010.

4.7 On 12 September 2011, the father applied to the State Administration for a change of C.'s residence and custody, given that the author envisaged moving to the United States with the child. During those proceedings, the author also sought the termination of joint custody. On 23 September 2011, the proceedings ended at a meeting at the State Administration, during which the parents reached no agreement on custody. The author asked for the case to be brought to court.

4.8 On 6 July 2012, the Svendborg District Court decided to terminate the joint custody arrangement and award the father sole custody, finding this to be in the best interests of the child, in line with section 4 of the Parental Responsibility Act. On 24 September 2012, the High Court of Eastern Denmark upheld the judgment, despite finding that, among other things, it followed from the evidence produced that both parents could have custody. The High Court agreed with the District Court that, in view of C.'s special needs, it was in his best interests to remain in Denmark, where his problems were being clarified and where he attended a school that knew him and could handle those needs.[7]

4.9 On 27 September 2012, the author applied for determination of access to C. Her application was examined on 9 October 2012 at the State Administration. The parents were in disagreement as to the author's access to C. during the summer holidays. On 19 December 2012, the State Administration decided that the author would have access to C. for three weeks during the summer holidays and that the father would bring the child to and collect him from Copenhagen airport. The State Administration refused to stipulate a condition that C. could travel under an unaccompanied minor programme. The parents were in disagreement over the child's travel. The author wished C. to travel under the programme or, alternatively, that he be accompanied by one of her friends who was also travelling to the United States in July 2013. The father objected to C. travelling under the programme, considering that the author could collect the boy at Copenhagen airport herself and return him at the end of the access period; alternatively, the holidays could be spent in Denmark. Given that the parties were unable to agree on C.'s travel or that the access visit could take place in Denmark, the author requested a court to enforce the decision of the State Administration.

4.10 In its order of 3 May 2013, the enforcement court found that the decision of the State Administration did not deviate from the Parental Responsibility Act, under which parents are jointly responsible for transportation. Given that the parents disagreed on the exercise of joint responsibility and as the court could not decide how exactly joint responsibility should be exercised, it concluded that the decision could not be enforced. The author appealed against the decision of the State Administration of 19 December 2012 to the National Social Appeals Board, but, on 2 July 2013, the Family Division of the Board upheld the decision not to stipulate any condition that C. could fly under an unaccompanied minor programme. In its decision, the Board emphasized, among other things, that no highly exceptional circumstances had been cited to enable it to decide on transportation in connection with access. On 29 January 2014, the Appeals Permission Board informed the Ministry of Justice that the author had not applied for permission to appeal against

[7] No further information is provided.

the judgment of the High Court of Eastern Denmark of 24 September 2012, regarding the termination of joint custody, to the Supreme Court in the third instance.

4.11 Regarding the present communication, the State party suggests preliminarily that C. has no standing under the Convention and the communication is inadmissible in relation to him. Article 2 of the Optional Protocol states that communications may be submitted by or on behalf of individuals or groups of individuals who are under the jurisdiction of a State party and who claim to be victims of an infringement of a right set forth in the Convention. No provisions of the Convention suggest that it is intended to protect males. Furthermore, it is clear from the wording of article 2 of the Optional Protocol, read together with rule 68 of the Committee's rules of procedure, that only women who claim that their rights under the Convention have been violated can be considered victims. The Convention concerns discrimination against women only, yet the term "women" is not clearly defined. However, for biological reasons it is clear that males cannot be regarded as "women" and consequently they cannot be victims of violations of the Convention.

4.12 According to the State party, the communication should also be declared inadmissible under article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies. The crucial point of the author's communication is the decision on 24 September 2012 of the High Court of Eastern Denmark upholding the decision of Svendborg District Court to terminate joint custody and award sole custody to the father. The author could have applied to the Appeals Permission Board for permission to appeal against the decision of the High Court to the Supreme Court. The deadline for submitting such an application was eight weeks from 24 September 2012, but, according to the Board, the author never availed herself of that possibility. The State party emphasizes that the European Court of Human Rights has stated that a timely application to the Board for permission to appeal against decisions and judgments is required for domestic remedies to be exhausted.[8] Nothing suggests that the remedy of applying for permission to appeal is ineffective or insufficient. Therefore, all available domestic remedies have not been exhausted.

4.13 In that connection, regarding the Convention, the State party points out that the Committee's decisions indicate that authors of communications are required to exhaust any judicial or administrative remedy that is available in practice, can provide relief for the harm suffered and could be effective for the objective sought by the author in the particular circumstances of the case.[9] Particular remedies should not be exhausted only if their application is unreasonably prolonged or unlikely to bring effective relief. As described above, the author could have applied to the Appeals Permission Board for permission to appeal against the decision of the High Court to the Supreme Court. The application of that remedy would not be unreasonably prolonged and it cannot be assumed that it would be unlikely to bring effective relief. Application to the Board is free of charge, and the Board can grant

[8] Reference is made to application No. 11968/04, *Ugilt Hansen v. Denmark*, decision of 26 June 2006 of the European Court of Human Rights.

[9] See Marsha A. Freeman, Christine Chinkin and Beate Rudolf, eds., *The UN Convention on the Elimination of All Forms of Discrimination against Women: a Commentary* (Oxford, Oxford University Press, 2012), p. 637.

permission to appeal to the Supreme Court if the appeal concerns a matter of general public importance. Furthermore, the communication concerns a number of claims, including that the decisions of the relevant Danish authorities reflect positive discrimination for the ethnic Danish parent to the proceedings relative to the non-ethnic Danish parent, who happens to be a woman in this case. The issue does not appear to have been raised before the Danish authorities. It follows from the case law of the Committee that an author must have first raised at the national level the substance of the claims that she wishes to bring before the Committee.[10]

4.14 According to the State party, nothing in the communication or the annexes thereto shows that any allegation of gender-based discrimination against the author as a woman has ever been made by her before the national authorities and that, accordingly, the national authorities have not yet had an opportunity to deal with any potential implied assertion that their decision involved gender-based discrimination.[11] No allegations regarding infringement of rights under the Convention appear to have been raised by the author throughout the national proceedings. The judgments of 6 July 2012 of the Svendborg District Court and of 24 September 2012 of the High Court of Eastern Denmark concern standard custody proceedings. There is no indication that any issues relating to rights under the Convention were raised, whether explicitly or implicitly, during those proceedings. Thus, the author has not exhausted domestic remedies.

4.15 The State party further claims that the communication should be declared inadmissible under article 4 (2) (c) of the Optional Protocol because it is manifestly ill founded and not sufficiently substantiated. The author has failed to substantiate why or how her own and her son's rights under article 16 (1) (d) of the Convention have been infringed. She has failed to indicate or specify how particular decisions, acts or omissions by the Danish authorities have allegedly constituted an infringement of rights under the Convention. Instead, she has put forward general and unsubstantiated claims against the Danish authorities for the sole reason that they did not find in her favour and award her sole custody of her son. Furthermore, the State party refers to the reasons given in the judgments of 6 July 2012 of the Svendborg District Court and of 24 September 2012 of the High Court of Eastern Denmark, which show that the courts weighed up the specific circumstances of the case, that in doing so they took into consideration the best interests of the child, as guaranteed in section 4 of the Parental Responsibility Act, that it would be best that the author's son remain in Denmark and that, accordingly, they reached the conclusion that sole custody should be awarded to the father. The State party further notes that the author alleges that many foreign women and their children are being terrorized by the Danish authorities and that Denmark will do anything to satisfy the demands of an ethnic Danish male, observing that those allegations are completely unsubstantiated, given that they are not corroborated by any evidence or documentation. Thus, the communication should be declared inadmissible as insufficiently substantiated under article 4 (2) (c) of the Optional Protocol.

[10] Reference is made to communications No. 8/2005, *Kayhan v. Turkey*, decision of inadmissibility of 27 January 2006, and 10/2005, *N.S.F. v. the United Kingdom*, decision of inadmissibility of 30 May 2007. Both were declared inadmissible because the authors had never raised their claims of discrimination based on gender before the submission of their communications to the Committee.

[11] See *N.S.F. v. the United Kingdom*, para. 7.3, and *Kayhan v. Turkey*, para. 7.7 (note 10 above).

4.16 Lastly, the State party submits that the communication should be declared inadmissible under article 4 (2) (d) of the Optional Protocol as an abuse of the right to submit a communication. The State party emphasizes that the author never raised her allegations regarding infringements of the Convention before the national authorities. She did not apply for permission to appeal against the judgment of 24 September 2012 on termination of joint custody to the Supreme Court in the third instance and failed to provide reasons or evidence in support of her allegation that article 16 (1) (d) of the Convention had been violated. According to the State party, the author is in fact seeking to obtain an additional review of the issue of the custody of her son by using the Committee as an appeal body. The State party notes in that regard that the role of the Committee is not to replace national review options or to constitute an extra appeal instance relative to decisions made by the competent authorities of States parties. In that light, the author's communication in reality represents an abuse of the right to complain.

4.17 The State party reserved the right to make observations on the merits of the case at a later date, if relevant. The State party invited the Committee to assess and decide on the issue of the admissibility of the communication separately from its merits.

Author's comments on the State party's observations

5.1 The author submitted her comments on the State party's observations on admissibility on 18 October 2014. She notes that the State party omitted to refer to the judgment of the High Court of Eastern Denmark of 12 March 2010, upholding the judgment of the Svendborg District Court of 28 April 2009. She explains that in fact the hearing before the District Court was postponed so that a child welfare investigation could be prepared. The investigation was carried out by a social worker, who concluded that both parents were competent and caring parents with a good and empathetic understanding of C. The expert added that "it is my unequivocal impression that [K.], for C., is the primary caregiver and the parent who C. is most bonded with. It is my recommendation that C. will continue to live with his mother". On that basis, the High Court ordered that joint custody should continue and the child should continue to reside with his mother.

5.2 The author further refers to article 5 of the Convention, claiming that the Convention applies to her son, along with her as a foreign mother who gave birth to him and nursed and cared for him until the Danish authorities removed custody of him from her. In that connection, she claims, with reference to paragraph 5 (b) of the Convention, that the Danish authorities did not ensure the child's best interests, but rather that the interests and demands of the ethnic Danish male were paramount.

5.3 On the issue of non-exhaustion, the author contends that the State party's observations are "false and misleading" because it did not list several applications that she made, such as to the State Administration, the High Court, the municipality and the National Social Appeals Board. She adduces documents showing several exchanges between the authorities (the State Administration, the Svendborg District Court, the High Court, the enforcement court, the municipality, psychologists and attorneys) and herself and claims that domestic remedies have been exhausted and that the process was unnecessarily prolonged and could not bring effective relief. She adds that the Supreme Court never examines the cases of foreign mothers and children if the father is an ethnic Dane and that the European Commission against

Racism and Intolerance has recommended that Denmark incorporate international legal instruments into national legislation, in particular the International Convention on the Elimination of All Forms of Racial Discrimination. The author quotes a report prepared by the Women's Council in Denmark, regretting the fact that the Convention has not been incorporated into Danish law. She concludes that the Danish authorities simply send foreign mothers and their children in circles, exhausting and draining the mothers of all their resources. According to her, the Danish system is dysfunctional and inhuman, "as demonstrated in the very basis of some of Denmark's misleading arguments to the Committee" regarding the admissibility of the present communication.

5.4 The author points out that there are other similar cases affecting foreign mothers, which shows the systematic patterns of human rights violations by the Danish authorities. She contends that her former husband knew that he could use the Danish system and use her as a foreign woman "to have absolute impunity to lie and use the Danish system over a foreign mother in Denmark, in his pursuit of sole custody of C.". During the three months that she spent with her father, who was seriously ill, her former husband met a worker of the Nyborg municipality in October 2007 in an attempt to remove the award of joint custody "and lied that [the author] didn't want her son and abandoned" him. A case was opened with the municipality, which helped the father to secure sole custody of C., without her knowledge.

5.5 Once the author returned to Denmark, her former husband sought to obtain sole custody of C in court. He intentionally began creating "high conflicts", refusing to discuss or agree with her on any important decisions regarding the child. The Danish authorities, "helping" him, refused to provide her with any information on her former husband and C.'s case, even though she had joint custody and was supposed to have a right to be included with the husband "in meetings and information". The author claimed that she requested the authorization of the court to return to the United States with C. given that her former husband and the authorities "were making [their] lives unbearable" and refused to cooperate with her or listen to C. "directly, in any way, regarding C.'s well-being and decisions".

5.6 She also claims that the judge did not allow her to use her notes to remember Danish words, even though there was no interpretation and she was testifying in Danish. The same judge, however, authorized her former husband to read from his notes. The judge also failed to notify her that a second report by a child psychologist had been ordered. The second report contradicted the initial report and helped her former husband to gain sole custody. The author claims that her former husband and his lawyer lied to private psychologists that she had given her consent for C. to be treated, whereas she never did that (she had even informed them in writing and over the telephone that she would not give her consent).

5.7 On 6 July 2012, the Svendborg District Court terminated the joint custody arrangement and awarded sole custody to the father. It based its decision partly on the educational psychological assessment of C. by the Nyborg municipality in January 2010, but did not use another report by a psychologist, Lone Husby, also in January 2010, favouring the author. The author claims that this shows that the District Court ordered a new child psychology report to be conducted "so it could favour" her former husband. Even though there had been a serious conflict between her and her former husband for four years, the District Court accused her of creating

a high level of conflict by moving back to California and used that to remove her custody rights.

5.8 The author appealed to the High Court, asking, among other things, to regain custody of her child, to have a new report prepared by a child psychologist and to have C. interviewed about his wishes. On 25 September 2012, the High Court rejected her requests for a psychological report and that C. be interviewed and, while acknowledging that both parents were suitable to hold parental responsibility, awarded full custody to the father.

5.9 The author was called to an emergency meeting at the State Administration after her former husband "lied and reported [that she] would kidnap C.". She handed C.'s United States passport to the interviewer. She was informed that she would not be able to take C. anywhere without her former husband's permission.

5.10 The author notes that, in 2012, when she had joint custody, her former husband would not allow her to take her son on holiday abroad. Since being awarded full custody, he has been obstructing every effort by the author to visit her son or to have even telephone or online contact. She is also unable to take her son on holiday within Denmark, because her former husband refuses to allow it and the authorities do not help her "simply because [she is] a foreign mother".

5.11 The author and her former husband later went to the State Administration to agree on visitation rights. On 19 December 2012, it was agreed that she would be entitled to three weeks' summer holiday every year with C. and two weeks every other Christmas in odd years. She was entitled to have contact online at least twice a week, but in fact has it only once a week. The last time, her former husband was sitting in the room monitoring the conversation and shouting at her when he was unhappy about something that was said. The author explains that this traumatizes C., who runs out of the room when her former husband begins to shout, and both she and C. are terrorized by his abusive behaviour.

5.12 The author contends that, with the support of the authorities, her former husband requested the State Administration to order that her visitations with C. take place only in Denmark, under supervision, because she does not know how to take care of the child. He also wanted to end all online communications.

5.13 On 29 April 2013, the author requested the enforcement court to enforce her visitation rights with C. as set forth by the State Administration, but the court stated that it was unable to do so. The court also denied her request to have C. interviewed, allegedly because her former husband refused to allow it; the court suggested that she should file a case with the State Administration and ask for changes to her visitation rights. She submitted a request to the State Administration on 3 May 2013, which was rejected on 13 June 2013, but the author was advised to complain to the National Social Appeals Board, which she did. On 2 July 2013, the Board rejected her application, confirming the decision of the State Administration.

5.14 The author claims that such rulings "seriously call into question the rationale of the findings that were made in the interests of the child". The discrimination in Denmark cannot be deemed compatible with the notion that her son's best interests prevailed by removing joint custody from a foreign mother and removing a child's foreign mother from the child's life simply because she is not Danish.

5.15 According to the author, C. has told his teachers that he loves her, a statement that is confirmed in writing in his student plan interview, according to which he was very upset that he was not allowed to move and live with her. Lone Husby also stated the same in her report. The author claims that it is inhumane that in Denmark children are not allowed to live or even have visitation rights with their foreign mothers, simply because Danish fathers have absolute power. She claims that ethnic Danish men have no incentive to cooperate with foreign mothers in the best interests of the child, because the system ensures that fathers' demands are met.

5.16 The author adds that, after she and her former husband found it impossible to agree on visitation rights for the summer of 2014, her former husband requested a change in the visitation arrangements from the State Administration on 18 February 2014. On 19 February 2014, the author also wrote to the State Administration and requested that the visitation orders should be changed and her son allowed to use the service offered by most airlines for children flying alone. On 11 March 2014, the State Administration rejected her request, stating that no significant change in her son's condition had occurred and that she had not provided evidence that the change would be best for him. On the same day, the State Administration agreed to consider her former husband's request to change visitation arrangements and, in addition, invited him to clarify what arrangements for the child and his mother he wanted.

5.17 The author requested the State Administration to allow C. to spend a summer holiday with her and her new husband in Italy from 11 July to 1 August 2014. On 10 April 2014, the State Administration informed her that, based on her son's well-being and condition, it was wondering whether it was best for him to travel out of the country for a summer holiday and proposed that the holiday take place in Denmark. On 15 May 2014, after the State Administration had had C. interviewed by a psychologist from Nyborg municipality, it wrote to inform her former husband that, based on the conversation with C., it assumed that he agreed that the child would be going on holiday with his mother to Italy that year.

5.18 The author explains that the current visitation orders from the State Administration, dated 30 May 2014,[12] include a change to the effect that visitations in Italy and California are no longer approved as a rule. She is now required to apply for permission to have a visitation with her son whenever she and her former husband do not reach an agreement on visitation. However, the State Administration approved the summer holidays in 2014, to take place in Italy from 11 July to 1 August.

State party's additional observations

6.1 On 7 January 2015, the State party referred to its previous observations and, regarding the author's allegations concerning the determination of the State Administration on access in the summer of 2014 as another example of gender-based violence (see paras 5.16 onwards above), referred to the decision of the State Administration of 30 May 2014 on access arrangements, wherein the access arrangements for travel to the United States and Italy had been changed and needed to be assessed on a case-by-case basis and the travel of the son to Italy in the summer of 2014 with his mother and her boyfriend had been authorized.

[12] Copy provided.

6.2 The State party submits that the State Administration weighed up the specific circumstances of the case when making its decision and, in doing so, took into account the best interests of the child. Against that background, the State Administration has decided that access periods to be spent in the United States or Italy must be applied for on a case-by-case basis. Thus, in the State party's opinion, the decision of the State Administration in no way reflects positive discrimination for the party to the proceedings who is of Danish ethnicity relative to the party to the proceedings who is of non-Danish ethnicity.

6.3 The State party maintains its previous position on the inadmissibility of the author's communication (see para. 4.1) and continues to reserve the right to make observations on the merits of the case at a later date, if relevant.

Issues and proceedings before the Committee concerning admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

7.2 The Committee notes that the same matter has not been and is not being examined under another procedure of international investigation or settlement and thus it is not precluded by article 4 (2) (a) of the Optional Protocol from examining the present communication.

7.3 The Committee recalls first that under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted, except if the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

7.4 The Committee notes the State party's objection that the communication should be declared inadmissible under article 4 (1) of the Optional Protocol for non-exhaustion of domestic remedies, given that the author did not apply to the Appeals Permission Board for permission to appeal against the decision of 24 September 2012 of the High Court of Eastern Denmark upholding the decision of the Svendborg District Court of 6 July 2012 to terminate joint custody and award sole custody to the father (see para. 4.12 above). The deadline for submitting such an application was eight weeks from 24 September 2012, but the author never availed herself of that possibility, although application to the Board is free of charge. According to the State party, nothing suggests that the remedy of applying for permission to appeal is ineffective or insufficient. In addition, the State party submits that the author never invoked discrimination as a foreign woman or discrimination based on gender throughout the proceedings and that, accordingly, the national authorities have had no opportunity to deal with any potential implied assertion that the decision involved discrimination based on gender at the material time (see paras. 4.12 to 4.14 above).

7.5 The Committee notes the author's explanations to the effect that the State party's observations regarding the exhaustion of domestic remedies are "false and misleading" because they do not list a number of applications that she made over the past several years. She adduces documents showing several exchanges that she had with the authorities, in an attempt to show that the entire process was unnecessarily prolonged and failed to bring effective relief (see para. 5.3 above).

She also contends, without, however, providing any examples, that the Supreme Court never examines the cases of foreign mothers and their children if the father is an ethnic Dane. She also invokes a report prepared by the Women's Council in Denmark, regretting the fact that the Convention has not been incorporated into Danish law. In the author's opinion, the Danish authorities "send foreign mothers and their children in circles, exhausting and draining the mothers of all resources" and the Danish system is dysfunctional and inhuman, "as demonstrated in the very basis of some of Denmark's misleading arguments to the Committee".

7.6 The Committee notes that, while the author provides examples of a number of her exchanges with the authorities regarding child custody and access/visitation rights, she adduces no explanation why she never attempted to seek permission to appeal against the judgments of the Svendborg District Court and the High Court of Eastern Denmark of 6 July 2012 and 24 September 2012, respectively, giving sole custody to the father.

7.7 The Committee also notes that, in her most recent set of comments, the author merely contends that the Supreme Court has never examined child custody cases where a foreign mother and a Danish father are involved, without, however, submitting any further explanation, document or evidence in support of her allegations. In addition, she does not explain why she did not raise her substantive claims, including those relating to discrimination based on gender or nationality, before the competent national authorities, including in a request for permission to appeal to the Supreme Court before the submission of her case to the Committee. In this connection, the Committee notes with regret that the State party has also not submitted any information concerning the effectiveness of the examination of child custody cases when permission to appeal against decisions of the high courts to the Supreme Court is sought at the Appeals Permission Board; nor has it adduced data on the number of custody cases heard by the Supreme Court where leave for appeal has been granted by the Board, in particular on the number of child custody cases involving foreign parents.

7.8 In those circumstances, and in the absence of any other pertinent information or explanation on file, the Committee considers that, in the particular circumstances of the present case, it cannot conclude that the author has exhausted all available domestic remedies for purposes of admissibility. Accordingly, the Committee is of the view that the communication is inadmissible under article 4 (1) of the Optional Protocol.

7.9 Having reached that conclusion, the Committee decides not to examine any of the remaining inadmissibility grounds invoked by the State party.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (1) of the Optional Protocol;

(b) That this decision shall be communicated to the State party and to the author.